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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,834	06/26/2000	Michael Kraus	39727/DBP/E43	2410

7590

06/14/2002

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EXAMINER

OROPEZA, FRANCES P

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 06/14/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,834

Applicant(s)

KRAUS ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 3/28/02 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. In the Applicant's response of 3/28/02, claims 1-22 were amended. Claims 1-22 are pending in this application.
2. The Applicant argues in his response of 3/28/02 that de Corioles (EPO 0607638) does not anticipate the Applicant's invention because, as amended, the Applicant's invention calls for the data transmission to begin with a triggering signal sent by the electromedical implant. The applicant's arguments are convincing, hence a new grounds of rejection is presented below. This action is made final since the amendments to the claims have clarified that the "one transmitter/receiver unit" is associated with the electromedical implant and the "second transmitter/receiver unit" is associated with the external apparatus.

Drawings

3. Amended figures 1-6 and 8-10 have been approved and included in the record. A corrected drawing for figure 7 was apparently inadvertently omitted in the response to Office Action No.6.
4. Figure 7 is objected to under 37 CFR 1.83(a) because the rectangular boxes are not labeled as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Information Disclosure Statements

5. It appears two Information Disclosure Statements (IDSs) have been submitted by the Applicant, one on 8/8/01 and the second on 2/20/01. Copies of the two IDSs and the two signed PTO-1449 are missing from the file. The Examiner has requested the Mr. Paciulan fax copies to the Examiner of the two IDSs (excluding references) and the two signed PTO-1449s he received with Office Action No. 6.

Claim Rejections - 35 USC § 103

6. Claims 1, 2, 4, 6-17, 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soykan et al. (US 6236889) in view of de Coriolis (EPO 0607638).

Soykan et al. disclose a method and apparatus for coupling an implantable medical device (20) and a receiver (34) to a communication channel (36) for transmitting data to a remote external unit (40). Data transmission is initiated by the implantable device (c 1, l 55 – c 2, l 3; c 4, ll 36-40; c 4, l 66 0 c 5, l 7). The implanted device can also receive downlinked telemetry commands (c 2, ll 33-36). Acoustic and electromagnetic data transmission modes are disclosed (c 2, ll 42-55). While the signal modulation is accomplished by known techniques, the specifics of the signal modulation and system component interaction are not discussed (c 5, l 67 – c 6, l). Soykan et al. disclose the claimed invention except for the specifics of the signal modulation and system component operation as noted in the applicant's claims (1-22).

de Coriolis discloses a telemetry system for an implantable device and teaches the specifics of the signal modulation and system component interaction to enable signal transmission as discussed in paragraph 7 of Office Action, Paper No. 6. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to

modify the method and apparatus for coupling an implantable medical device to a remote external unit as taught by Soykan et al., with the specifics of the signal modulation and system component interaction to enable signal transmission as taught by de Coriolis so a known and proven means of signal modulation and system component interaction is adopted to enable data transfer between the implanted device and the remote external unit so the patient's condition can be evaluate the patient's care optimized.

7. Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soykan et al. (US 6236889) and de Coriolis (EPO 0607638) in view of Wyborny et al. (US 5354319).

As discussed in paragraph 6 of this action, modified Soykan et al. discloses the claimed invention except for the intervals varying in length. Wyborney et al. disclose a telemetry system and teach that it is known to use variable interval lengths (c 5, ll 53-58). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the modified method and apparatus for coupling an implantable medical device to a remote external unit as taught by Soykan et al., with the variable interval lengths as taught by Wybroney et al. to compress the frame length so more data can be transmitted in a fixed time.

8. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soykan et al. (US 6236889) and de Coriolis (EPO 0607638) in view of Fountain et al. (US 4625730).

As discussed in paragraph 6 of this action, Soykan et al. discloses the claimed invention except for the triggering signal being initiated by the wearer and having a telemetry communication occur when appropriate operating parameters exist. Fountain et al. disclose an ECG recording controller and teach that it is known to provide a manual means for initiating a triggering pulse to begin a transmission when the patient perceives an emergency situation (abstract and c 6, starting

at 123). The registering of an emergency by the patient is read as an appropriate operating parameter for initiating a communication transmission. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the modified method and apparatus for coupling an implantable medical device to a remote external unit as taught by Soyken et al., with the manually initiated emergency signal and subsequent communication transmission as taught by Fountain et al. to provide a system with a means that enables the patient to get help when he perceives help is needed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

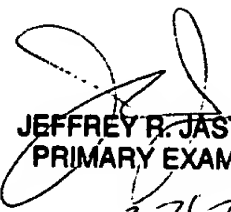
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762


JEFFREY R. JASTRZAB
PRIMARY EXAMINER
3762
6/11/02